

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

United States of America,

v.

Criminal No. 2:19-cr-00235

Julie Marie Wheeler.

SENTENCING MEMORANDUM OF DEFENDANT WHEELER

Comes now the defendant, Julie Marie Wheeler, by counsel, Roger L. Lambert, and respectfully submits the following sentencing memorandum.

Title 18 U.S.C. § 3553(a) Factors

A. Nature and circumstances of the offense

From June 30, 2017 to May 31, 2018, Wheeler overbilled the Veteran's Administration Spina Bifida Program for providing in-home healthcare services to her sister KL.

Wheeler provided KL with legitimate services approximately 20 hours per week during the relevant time period. But during the same time, Wheeler was working full-time for her employer, Lincare Holdings, Inc. Because Wheeler billed the government for working full-time as KL's caregiver, Wheeler overbilled the government in the amount of \$289,055.07. PSR ¶ 39

A review of Wheeler and KL's bank records revealed that Wheeler provided a significant portion of the aforementioned amount to KL.

B. The history and characteristics of the offender

Wheeler is a 43 year old female, who is a lifelong resident of the Southern District of West Virginia. PSR ¶ 68. Wheeler has virtually no past criminal history. PSR ¶ 55-56. Wheeler has a relatively significant employment history, with long spans of

employment in office jobs, except for periods that she was unemployed, so she could care for her children. PSR ¶ 73-74.

Wheeler has been treated for depression for the past ten years. PSR ¶ 70. Additionally, Wheeler has suffered from a great deal of stress in recent years due to deaths in her family. In 2016, Wheeler's father passed away. And in late 2018, Wheeler's sister KL passed away, with whom she had a very close relationship. PSR ¶ 64-65.

Pending sentencing in this matter, Wheeler allegedly faked her own death to avoid a prison sentence in this matter. Because of this conduct, the probation officer has recommended to the Court that Wheeler not receive a reduction for acceptance of responsibility. PSR ¶ 42-43.

Wheeler is currently being held on state charges resulting from this incident. PSR ¶ 58. Furthermore, the US Attorney for the Southern District has commented on his Twitter account that federal charges are being considered. Accordingly, Wheeler will be exercising her constitutional right to remain silent regarding this incident at sentencing. But she also will not be contesting these facts. Regarding this incident, Wheeler would ask the Court to consider both her mental health history and the family losses she has suffered, which have caused her to be extremely afraid of losing her husband and children during her imprisonment.

C. Kinds of sentences available and kinds of sentences and ranges established by the guidelines and pertinent policy standards

With the loss of the reduction for acceptance of responsibility recommended by Probation, Wheeler's total offense level is 20, which with a criminal history category of one, yields a guideline imprisonment range of 33-41 months. PSR ¶ 82.

D. The need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment, afford adequate deterrence and protect the public.

Wheeler is now a convicted felon facing a sentence of imprisonment. She has expressed remorse for her crimes. Although this is a serious crime, Wheeler would ask the Court to consider that it was neither a crime of violence nor a crime affecting public safety, such as a drug offense. Although a healthcare fraud offense may, generally speaking, affect public safety in that it could result in victims not receiving adequate healthcare, Wheeler would assert that there is no evidence in the record that KL's health was negatively impacted as a result of the fraudulent scheme herein.

E. Need for the sentence to provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner

Wheeler has established by her lengthy employment history that she does have marketable skills to make her a productive member of society. In fact, at the time she entered her guilty plea in this matter, she was gainfully employed. After her guilty plea was entered, the US Attorney for the Southern District of West Virginia issued a press release regarding Wheeler's conviction. Wheeler's employer saw this press release and terminated her employment because of it.

Although Wheeler does suffer from depression, community resources are available to adequately address this problem.

F. The need to avoid unwarranted sentencing disparity

The need to avoid unwarranted sentencing disparities is an important consideration for the Court. But statistics maintained by the US Sentencing Commission establish that downward variances regarding healthcare offenders occur often. Specifically, 44.5% of healthcare fraud offenders received variances, 98.9% of which were downward variances. On average, offenders who received downward variances had their sentences cut in half at 51.5%. See USSC, Quick Facts-Healthcare Fraud

Offenses, FY 2018, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Health_Care_Fraud_FY18.pdf (last accessed June 9, 2020).

G. The need to provide restitution to victims

This factor weighs heavily towards getting Wheeler back to work as soon as possible, so she can pay back her debt to the government.

JULIE MARIE WHEELER
By counsel,

/s/ Roger L. Lambert
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CERTIFICATE OF SERVICE

I, Roger Lambert, hereby certify that the foregoing "*Sentencing Memorandum of Defendant Wheeler*" has been electronically filed and served on the following by such filing on this 9th day of June, 2020.

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